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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Implementation of
Section 309(j) of the
Communications Act -
Competitive Bidding

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PP Docket No. 93-253

To: The Commission

PETITION FOR RECONSIDERATION

I. Preliminary Statement

1. The United States Interactive & Microwave Television Association ("USIMTA") and the United States Independent Personal Communication Association ("USIPCA"), pursuant to section 1.429 of the Rules, submit this Petition for Reconsideration of the Commission's Fifth Report and Order ("Order") in this proceeding released July 15, 1994, PP Docket No. 93-253, FCC 94-178, 59 Fed Reg 37566. USIMTA/USIPCA seek reconsideration of a number of issues regarding the treatment of designated entities.

2. While USIMTA/USIPCA were not "parties" to the rulemaking proceeding in PP Docket No. 93-253, they clearly are interested "parties" whose interests have been adversely affected by the action taken in that proceeding. USIMTA/USIPCA are nonprofit associations comprising of wireless cable TV operators, interactive TV operators, specialized mobile radio operators, paging operators,

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licensees, license applicants, equipment manufacturers, small businesses and designated entities. Many of these small business entities have an interest in expanding into developing areas of telecommunications such as PCS services. Inasmuch as these entities are potential providers of PCS services, there is no question but that USIMTA/USPICA, by their members, are aggrieved parties whose interests are adversely affected by the actions taken by the Commission in the Order. Consideration of USIMTA/USIPCA'S comments is required in the public interest in accordance with §1.429(b)(3) of the Commission's Rules.

3. In the Order the Commission, among other things, adopted rules to provide opportunities for small entities and businesses owned by women and minorities to provide broadband PCS services. Specifically, the Commission established: (1) two entrepreneurs' blocks (frequency blocks C and F) for which only companies with less than \$125 million in annual gross revenues or less than \$500 million in total assets are eligible to bid; (2) bidding credits that will be granted both to small businesses and to businesses owned by women and minorities in the entrepreneurs' blocks; (3) that certain winning bidders will be permitted to pay the license price in installments, and the interest rate and moratorium on principal payments will be adjusted to assist small businesses and women and minority-owned businesses; (4) a tax certificate program; (5) broadband PCS licenses for rural telephone companies that are geographically partitioned from larger PCS service areas; and (6) upfront payments of \$0.015 per MHz per pop, in contrast to \$0.02

required in other blocks.

4. The Commission established these rules in response to a Congressional mandate that small businesses, rural telephone companies, and businesses owned by members of minority groups and women be given the opportunity to participate in the provision of spectrum-based services. 47 U.S.C. §309(j)(4)(d) However, these new rules and policies do not provide realistic opportunities for women and minority-owned small businesses. The standards for participation are set too high and will allow substantially large business entities to qualify as designated entities and thus unfairly compete against women and minority-owned small businesses.

II. The Commission Should Reserve More Than One Block of 30 MHz Licenses and One Block of 10 MHz Licenses for Bidding by Designated Entities and License BTA's Before MTA's.

5. In order to provide designated entities with a meaningful opportunity to provide spectrum-based services as mandated by Congress, the Commission should reserve a greater portion of the available PCS spectrum as entrepreneurs' blocks. In the Order, the Commission reserved blocks C and F for bidding by small entities. (¶¶ 12, 121) Reserving two of six blocks of PCS licenses, which total 40 MHz out of 120 MHz, reflects only one-third of the available broadband PCS spectrum.

6. Given the immense concern Congress has expressed about the historical impediments that small businesses and minority and women-owned businesses have faced, it would not be unreasonable to

set aside as much as one-half of the available PCS spectrum for bidding by designated entities.¹ Reserving as much as one-half of broadband PCS spectrum for bidding by designated entities would result in a more level telecommunications playing field and also fulfill Congress's mandate that designated entities have the opportunity to participate in providing PCS services.

7. To further ensure that designated entities have a meaningful opportunity to provide PCS services, the Commission should license BTA's first instead of MTA's. The Commission divided the auctioning process into three separate auctions: auctioning the MTA licenses in blocks A and B first, the BTA licenses in blocks C and F (entrepreneurs' blocks) second; and the BTA licenses in blocks D and E last. (§ 37) In separating the blocks and auctioning them at different times, the Commission has underestimated the advantage that large companies will have in bidding for the non-reserved BTA's after the MTA's. Once a large company has acquired a MTA license that covers a geographically larger area than a BTA, the subsequent acquisition of a nearby BTA will be of greater value to the licensee of the MTA. Consequently, the MTA licensee will have more at stake and will be prepared to outbid smaller companies for the BTA licenses. Licensing the BTA's first will give designated entities a realistic opportunity to acquire PCS licenses before their value is artificially increased by the demand of nearby MTA licensees. Thus, the Commission should

¹ See Order, §§ 106-108.

license BTA's before it licenses MTA's.

**III. The Eligibility Requirements for Participating In The
Entrepreneurs' Blocks and Definition of Small Business
Are Too High And Should Be Lowered.**

7. The Commission's financial standards for eligibility to participate in the entrepreneurs' block are too high and should be lowered. The Commission limited eligibility to bid in the entrepreneurs' blocks to entities, together with their affiliates, that have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. (§ 121) The Commission has erroneously concluded that the \$125 million gross revenue/\$500 million asset caps have the effect of excluding the large companies that would easily be able to outbid designated entities and frustrate Congress's goal of disseminating licenses among a diversity of licenses. Entities that come anywhere close to having \$125 million in gross revenues and \$500 million in assets are large companies and should not be able to compete with small businesses owned by women and minorities. The standards set by the Commission effectively allow relatively large companies to compete with the smallest of companies that are more likely to be owned by women and minorities. The net result of this will undoubtedly be that companies that are just under the cap will outbid companies that are far below, notwithstanding the ability of the smaller companies to raise capital.

8. Similarly, the Commission's financial definition of small business should be reduced in accordance with the definition of small business as determined by the Small Business Administration ("SBA"). In the Second Report and Order, 9 FCC Rcd 2348, ¶ 267, released April 20, 1994, the Commission correctly adopted the SBA definition of a small business which permits an applicant to qualify for installment payments, a 25% bidding credit, and tax certificates based on a net worth not in excess of \$6 million. However, in the Order the Commission changed the definition to a gross revenue standard to \$40 million. (Order, ¶ 175) Small businesses owned by women and minorities are far less likely to be near the \$40 million gross revenue cap than they are to the \$6 net worth revenue standard. To allow entities that have close to \$40 million in gross revenues to compete and receive the same benefits as companies with less than \$6 million in revenues serves only to deny the smaller entities a realistic opportunity to provide PCS services. The \$6 million standard is not overly restrictive and it provides the best opportunity for women and minority-owned businesses to effectively participate in PCS services. Small businesses will be overshadowed by entities that have close to \$40 million in gross revenues. Such a standard will not result in participation of minorities and women and therefore does not comply with Section 309(j)(4)(d) of the Communications Act.

**IV. The Designated Entity Bidding Credit Should
Be Increased From 25% to 40%**

9. Small businesses owned by women and minorities should

receive a 40% bidding credit as opposed to the 25% credit established in the Order (§114). The Commission recently increased the bidding credit for two of the six regional narrowband licenses from 25% to 40% for women-and minority-owned business. (See Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93-253, FCC 94-219, released August 17, 1994.) The Commission raised the bidding credit in the regional narrowband auction because no women- and minority-owned businesses won licenses in the nationwide narrowband auction. The outcome of the nationwide narrowband is a clear indication that minority- and women-owned businesses are in need of greater bidding credits. The Commission should therefore increase the bidding credit to 40% before the broadband auctions begin to avoid any further exclusion of women- and minority-owned businesses.

V. Conclusion

10. For the foregoing reasons, USIMTA/USIPCA urge the Commission to reconsider its rules regarding the treatment of designated entities. USIMTA/USIPCA maintain that a larger portion of the broadband PCS spectrum be reserved for bidding by designated entities and that BTA's be licensed before the MTA licenses. The Commission should also lower the eligibility requirements for participating in the entrepreneurs' blocks as well as the gross

revenue standard for small businesses. Lastly, the bidding credit for designated entities should be increased from 25% to 40% in conformance with the regional narrowband licenses.

Respectfully submitted,

USIMTA/USIPCA

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August 22, 1994

CERTIFICATE OF SERVICE

I, Jacqueline Solomon, a secretary with the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 22nd day of August, 1994, copies of the foregoing "Petition for Reconsideration was sent by hand delivery to the following offices:

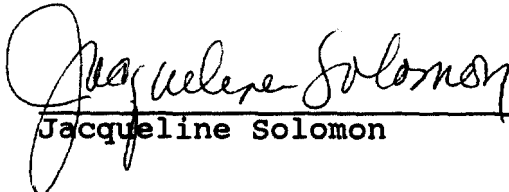
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